AUG 1 3 1980

Items 964-B 1/16/81 ocw 1802

T 22.44/2 :586 A/3

Publication 586A
(Revised January 1980)

The Collection Process (Income Tax Accounts)

311-369/190 + New

Existe una versión de esta publicación en español, la Publicación 586S, que puede obtener en la oficina local del Servicio de Impuestos Internos.

$1.00
S/N 048-004-01713-0
For collection - M-5

Department of the Treasury
Internal Revenue Service

Table of Contents

I. Introduction 1
II. Liability for Unpaid Taxes 1
A. Notice and Demand 1
B. Accelerated Notice and Demand 1
III. Payment Procedure 1
A. If You Believe Your Bill Is Wrong 1
B. If You Believe You Can't Pay 2
1. Submission of Collection Statement 2
2. Immediate Full Payment 2
3. Installment Payments 2
4. Delayed Collection 2
C. Refund Offset 2
D. Summary 2
IV. Enforced Collection Policy 2
A. Federal Tax Lien 2
B. Levy 2
1. Property Exempt from Levy 2
2. Property Generally Not Levied On 3
C. Seizures and Sales 3
1. Seizures 3
2. Sales 3
3. Proceeds of Sale 3
4. Redemption of Property 3
V. Claim Procedure 3
A. How to Claim a Refund or Credit 3
B. Time for Filing a Claim for Refund or Credit: General Rule 3
C. Limit on Amount of Refund or Credit 3
D. Processing Claims for Refund or Credit 3
E. Rejected Claims—Filing Suit in District Court and Court of Claims 3
VI. Rights 3
A. Representation 3
B. Transfer of Your Tax Case to Another Geographical Area 4
C. Interest on Refunds 4
D. Receipts 4
E. Privacy Act Notice 4
F. Confidentiality of Tax Matters 4
G. Elimination of Penalty—Reasonable Cause 4
H. Offers in Compromise 4
I. Supervisory Review of Employee Decisions 4
J. Entry Upon Private Property 4
K. Problem Resolution Program 4

I. Introduction

This booklet is designed to explain your rights and duties as a taxpayer owing a bill for taxes. It also explains our statutory obligation to collect overdue taxes, and how we fulfill this obligation. It is not intended to be a precise and technical analysis of the law in this area.

II. Liability for Unpaid Taxes

A. Notice and Demand

Each return filed with Internal Revenue Service is checked for mathematical accuracy and to see whether appropriate payment has been made. If tax is owing, a notice of tax due will be sent to you.

We are required to issue you this bill, which is demand for payment. You are then required by law to make payment within 10 days of the date of this bill. If the tax remains unpaid after the 10 day period has passed, a statutory lien attaches to your property.

B. Accelerated Notice and Demand

While the routine billing procedure is followed in the great majority of cases involving unpaid taxes, situations arise when the normal 10 day notice and demand period must be shortened. Accelerated billings are made if we have reason to believe that delay will cause the situation to worsen. These bills become immediately due and payable after delivery of the notice and demand to you, and collection action may begin if payment is not made at once.

III. Payment Procedure

By law you are required to pay a bill within 10 days after receiving the notice and demand. Most taxpayers respond to this first notice and pay the full amount owed.

If your tax is not paid on time, the law provides for interest and penalty for late payment.

Interest—Beginning February 1, 1980, the rate will be 12 percent a year on the unpaid tax from the due date of the return. (By law, the interest rate is subject to periodic adjustment. For the two years prior to February 1, 1980, a 6 percent rate applied.)

Penalty for Late Payment—is ½ of 1 percent of the unpaid tax for each month, or part of a month the tax remains unpaid. The penalty cannot exceed 25 percent of the unpaid amount.

Penalty for Failure to File—If you fail to file your return by the prescribed due date, you will be penalized 5 percent per month, or any fraction of a month that the return is late, up to a maximum of 25 percent. (However, when the liability for both the failure to file and failure to pay penalty exists in the same month, the failure to file penalty will be reduced by ½ percent per month, so that the total combined penalty does not exceed 5 percent for any given month.)

The penalties for late payment and filing may be eliminated if you show reasonable cause for not making the payment or filing timely (see Section VI G).

Accounts should be paid promptly to keep interest and penalty charges to a minimum. Whenever you make tax payments, be sure to enclose a copy of your bill, and enter your social security number and tax period on your check, money order or postal note, to ensure that your payment is correctly credited to your account. **If you believe your bill is wrong, or believe you can't pay, you should immediately write the office from which the bill was sent, or telephone or visit your local Internal Revenue Service Office.** Ordinarily, the local IRS office address and telephone number are located under the headings of "United States Government" in the white pages of your local telephone directory.

A. If You Believe Your Bill Is Wrong

If you believe that your bill contains an error, you should reply in writing to the office from which the bill was sent, or telephone or visit your local Internal Revenue Service office. It is important that you provide any records (always retain a copy for your files) you believe would help in correcting the mistake, such as cancelled checks (photocopies of both sides of the checks), or tax returns. If you are correct, the necessary adjustment will be made to your account. You will be asked to pay any tax, interest and penalty still due after the correction is made.

B. If You Believe You Can't Pay

If you believe that you cannot immediately pay your bill in full, contact your local Internal Revenue Service office. If you come in, bring your bill as well as records you have which would be useful in establishing your financial condition (such as loan payment books, information concerning current living expenses, income and assets, mortgage or rent books, unpaid bills, etc.). Explain the problem to our representative.

1. Submission of Collection Information Statements

(a) Immediate Full Payment

We may ask you to complete a Collection Information Statement. One of our employees will be available to aid you in the preparation of the statement. Once you have completed the statement, our employee will carefully review your financial condition to determine how you can pay the amount due.

2. Immediate Full Payment

Our employee may point out assets which could readily be sold, mortgaged or used to secure funds to pay the tax; or discuss your ability to secure a commercial loan for such purposes. If your financial condition shows that you have the ability to pay your tax in full, we will request that you do so promptly. If you neglect or refuse to pay in full, enforced collection action may be taken.

3. Installment Payments

The examination of your financial condition may indicate that you cannot make immediate full payment, but you do have the ability to pay through installments. In this case, we will help you prepare a form itemizing your monthly income and expenses. After studying this information, we may determine that an installment agreement is in order and, if so, it will be based on our determination of your maximum ability to pay. In certain cases we can arrange, through a payroll agreement, for your employer to withhold and regularly pay to us amounts deducted from your pay. In other cases you will be given the opportunity to give us post-dated checks to be deposited as your installment payments become due. You may, depending on the amount owed and other criteria, be given an installment agreement without submitting detailed financial information. We will not enter into installment agreements unless you agree to remain current in paying your future taxes. If an installment agreement is made, you must make each payment on time. Collection action may be promptly taken if you miss an installment without contacting us and discussing the circumstances causing the failure to pay. Also, during the time you are making payments, you may be required to appear for a review of your financial condition. The review will enable us to determine if you are able to increase the amount of your installment payments.

4. Delayed Collection

If your financial condition indicates that you cannot make any payment towards your liability at this time, we may decide to delay collection temporarily. This does not mean your debt is forgiven, or that penalty for late payment and interest stop accruing. Collection action is merely suspended until your financial condition has improved to the point where you can pay.

C. Refund Offset

If you become entitled to a refund at the time when you owe a tax liability, we will offset the refund due you against your unpaid liability. Only the excess refund, if any, will be paid to you. However, we will generally not withhold collection pending refunds you feel you may be entitled to in the future on returns not yet filed.

D. Summary

The most important step for you in the collection process is to contact the Internal Revenue Service. Contact us by mail or telephone or come into our local office. When you come to our office, we will assist you in determining the best way to pay your tax.

IV. Enforced Collection Policy

If you do not follow the recommendations just discussed, the law provides that we may take enforced collection action against your property or rights to property. The following is an explanation of our enforcement activity and your rights in relation to it.

A. Federal Tax Lien

Once notice and demand for payment (that is a bill for the tax due) is sent and you neglect or refuse to pay the tax, a statutory lien attaches to your property and rights to property. This lien is not valid against claims which certain of your creditors may have until a Notice of Federal Tax Lien has been filed. The filing of the Notice of Federal Tax Lien constitutes public notice to your creditors that a tax lien exists against your property, including property acquired after the Notice of Federal Tax Lien is filed.

Under normal circumstances, we don't need to file a Notice of Federal Tax Lien, because most taxpayers pay the tax due after receiving a bill. But if you neglect to pay the tax due, we must determine whether filing the Notice of Federal Tax Lien is necessary in order to protect the interest of the Government in your property. Once a Notice of Federal Tax Lien is filed, it becomes a matter of public record and may adversely affect your business transactions or other financial interests. (For example, it could impair your credit rating.) Therefore, it is normally filed only after we have tried to contact you and afford you the opportunity to pay.

In situations where the account is being paid through an installment agreement, a Notice of Federal Tax Lien may also be filed to secure the government's interest until the final payment is made. In addition, a Notice of Federal Tax Lien may be filed when collection action is delayed temporarily.

Generally, the Notice of Federal Tax Lien is filed with an office designated by State law.

A Federal Tax Lien will be released when the tax due (including interest and other additions to the tax) has been fully satisfied by payment or adjustment. All fees charged by the State for both filing and releasing a Notice of Federal Tax Lien will be added to the balance you owe.

B. Levy

The Internal Revenue Code provides that if you are liable to pay tax and you neglect or refuse to pay the tax within 10 days after the date of notice and demand, the tax may be collected by levy on any property, or rights to property, belonging to you.

A levy is the taking of property to satisfy a tax liability. Levy can be made on property either in the hands of third parties (employers, banks, etc.), or in your possession (automobile, boat, etc.). We take levy action only after you have had an opportunity to respond and make satisfactory disposition of the tax and have failed to do so. This does not apply, however, in situations where delay is likely to negatively affect collection of the tax.

A levy on salary or wages, once served, continues in effect until the tax bill(s) for which it was served is satisfied or becomes unenforceable due to lapse of time. The Service will notify your employer or other person against whom the levy was served when the tax is fully paid. The law provides a minimum exemption from levy on wages, salary and other income as explained in 1(j) below.

Generally court authorization is not required before levy action is taken unless collection personnel must enter into private premises to accomplish their levy action. (See Section VI. J. below). The only legal requirements are that the tax is owed and that a notice and demand for payment has been sent to your last known address; if payment is not made within the 10 day period stated on the notice and demand, it is lawful to levy immediately. As noted earlier, in situations when it is likely to have a negative effect on collection of the tax, this 10 day notice and demand period may be shortened.

If, at any point, during the levy process you establish reasonable doubt as to the correctness of the tax bill, the levy may be released. Further, the levy will be released in full or in part if you pay your tax bill or agree to an acceptable installment agreement.

1. Property Exempt from Levy

Certain types of property are exempt from levy by Federal Law. They are:

(a) Wearing apparel and school books. (However, expensive items of wearing apparel, such as furs, are luxuries and are not exempt from levy.)

(b) Fuel, provisions, furniture and personal effects, not to exceed $500 in value.*

(c) Books and tools used in your trade, business or profession, not to exceed $250 in value.*

(d) Unemployment benefits.

(e) Undelivered mail.
(f) Certain annuity and pension payments.
(g) Workmen's Compensation
(h) Salary, wages or other income subject to a prior judgment for court-ordered child support payments.
(i) Deposits to the special Treasury fund made by members of the armed forces and Public Health Service employees on permanent duty assigned outside the United States or its possessions.
(j) A minimum exemption for wages, salary and other income of $50 per week, plus an additional $15 for each legal dependent.

* As a matter of policy, the Service generally excludes $1500 in personal effects and $1000 in business property from levy, if it is concluded that levy action on property below these amounts would cause severe hardship.

The Internal Revenue Service employee levying on property of the type described above will appraise and set aside to you, when applicable, the amount of such property declared to be exempt. If you object at the time of the levy to the valuation fixed by the employee making the levy, you can request a valuation by three disinterested individuals.

2. Property Generally Not Levied On

As a matter of policy, some types of property are generally not levied on, or are levied on only in flagrant and aggravated cases of refusal to pay. These Include, for example, the following:

(a) Social Security benefits.
(b) Medicare payments.
(c) Welfare payments.
(d) Payments under the Manpower Development and Training Act of 1962 or the Area Redevelopment Act.
(e) Cash loan value of insurance policies.
(f) Death benefits.
(g) Pension plan proceeds.
(h) Contributions to individual retirement accounts (IRA) and KEOGH Accounts.
(i) Household property, for a head of household, up to $1,500 and business property up to $1,000, if it is concluded that levy action on property below these amounts would cause severe hardship.

C. Seizures and Sales

1. Seizures

Any type of property (including residential and business property) may be seized and sold to satisfy your tax bill. However, before seizing property, IRS considers factors such as your equity in the property and the sale value of the property. Serious consideration is given to all other alternatives before determining to seize a family home.

2. Sales

After property is seized for nonpayment of taxes, we then take action to sell it. Except in the case of perishable property which must be sold immediately, sales are not made until at least 10 days after notice to you and to the public about the proposed sale. Prior to sale, we compute a minimum acceptable price and advise you of the amount. If you are in disagreement, you may request a Service valuation engineer or a private appraiser to assist the Internal Revenue Service employee in re-evaluating the computation figures.

3. Proceeds of Sale

Sale proceeds are applied first to the expenses of the levy and sale; the remaining amount is then applied against the tax bill. If the sale proceeds are less than the tax bill and expenses of levy and sale, the unpaid portion will, of course, be subject to further collection action. When sale proceeds exceed the tax bill and expenses of levy and sale, the surplus money is held by IRS pending a request for distribution. Unless a person, such as a mortgagee or other lienholder, submits a claim superior to yours, these excess funds will be credited or refunded to you upon request.

4. Redemption of Property

You have the right to redeem your property at any time prior to the sale. Redemption consists of paying the tax due, including interest and penalties, together with the expenses of the seizure. Also, real estate may be redeemed at any time within 120 days after the sale by paying the purchaser the amount he/she paid for the property plus interest of 20 percent per annum.

V. Claim Procedure

A. How to Claim a Refund or Credit

Once you have paid your tax bill, you have the right to file a claim for refund or credit if you feel the tax is erroneous or excessive. You can obtain the necessary forms and information about filing your claim by calling or visiting any Internal Revenue Service office. You should file your claim by mailing it to the Internal Revenue Service Center where the original return was filed. A separate form must be filed for each tax year involved. You should attach to such form a statement supporting your claim, including an explanation of each item of income, deduction or credit on which you are basing your claim.

B. Time for Filing a Claim for Refund or Credit: General Rule

A claim for refund or credit must be filed within three years from the date the return was filed (returns filed before the due date are considered to have been filed on the due date) or within two years from the date the tax was paid, whichever date is later.

C. Limit on Amount of Refund or Credit

Limits on amounts of refund or credits are governed by the time period between the date your tax return was filed and the date your claim is filed. For claims filed within three years of the date of a timely filed tax return, the credit or refund may not exceed the amount of tax paid within that three year period. This would include amounts paid prior to the due date of the tax return (such as tax withheld from your wages and estimated tax payments) since these amounts are considered paid on the due date. If you do not file your claim within three years of the date of a timely filed tax return, the credit or refund may not exceed the amount of the tax paid within the two years immediately preceding the filing of your claim.

D. Processing Claims for Refund or Credit

Claims are usually processed shortly after they are filed. Your claim may be accepted as filed, or may be subject to examination. If your claim is examined, the procedures are the same as in the examination of a tax return. (Publication 556, "Examination of Returns, Appeal Rights and Claims for Refund" is available at your local IRS office to explain our procedures for examining returns and claims.)

E. Rejected Claims—Filing Suit In District Court and Court of Claims

If your claim is rejected, you will receive a statutory notice of disallowance of your claim. After receiving a notice of disallowance, you may file a suit for refund in a U.S. District Court or in the U.S. Court of Claims. You must file suit within 2 years from the date the notice of disallowance is mailed to you. Also, if we have not acted on your claim within six months from the date you filed it, you can then file suit for refund. If you seek prompt court action, without availing yourself of an IRS determination, a request in writing, that the claim be immediately rejected, must accompany your claim for refund. You can obtain information about procedures for filing suit in the District Court by contacting the Clerk of your District Court. You can obtain information about procedures for filing suit in the Court of Claims from the Clerk of the Court of Claims, 717 Madison Place, N.W., Washington, D.C. 20005.

VI. Rights

The following section contains an explanation of taxpayer rights. Read this section carefully to be sure that you are aware of the rights which may pertain to your tax account.

A. Representation

You may represent yourself or you may be represented by an attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service. If your representative attends a conference without you or telephones on your behalf, your representative must file a power of attorney or a tax information authorization before receiving or inspecting confidential information.

Form 2848, "Power of Attorney", or 2848D, "Authorization and Declaration", (or any

her properly written power of attorney or thorization) may be used for this purpose. opies of these forms may be obtained from any Internal Revenue Service office.

B. Transfer of Your Tax Case to Another Geographical Area

In any case where your tax problem can be handled more quickly and conveniently in another district, you may request that the case be transferred to that district. If you give a valid reason when making your request, the case will be transferred. For example, this would be done when your place of residence changes either before or during the discussion of your tax case.

C. Interest on Refunds

You will receive interest at the rate of 6 percent a year up to January 31, 1980, and at the rate of 12 percent a year after that, on any refund delayed more than 45 days after either the filing of your return or the due date of the return, whichever is later. (By law, the interest rate is subject to periodic adjustments.)

D. Receipts

You have the right to a receipt for any payment you make, including a receipt for all cash payments. You also have the right to receive copies of all contractual arrangements (such as an installment agreement) made with us.

E. Privacy Act Notice

The Privacy Act of 1974 says that each Federal agency that asks you for information must tell you the following:

(a) Its legal right to ask for the information and whether the law says you must give it.

(b) What major purposes the agency has in asking for it, and how it will be used.

(c) What could happen if the agency does not receive it.

For the Internal Revenue Service, the law covers:

Tax returns and any papers filed with them.

Any questions we need to ask you so we can—

Complete, correct, or process your return.

Figure your tax.

Collect tax, interest, or penalties.

Our legal right to ask for information is Internal Revenue Code sections 6001 and 6011 and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Code section 6109 and its regulations say that you must show your social security number on what you file. This is so we know who you are, and can process your return and papers.

You must fill in all parts of the tax form that apply to you. But you do not have to check the boxes for the Presidential Election Campaign Fund.

We ask for tax return information to carry out the Internal Revenue laws of the United States. We need it to figure and collect the right amount of tax.

We may give the information to the Department of Justice and to other Federal agencies, as provided by law. We may also give it to States, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. And we may give it to foreign governments because of tax treaties they have with the U.S.

If a return is not filed, or if we don't receive the information we ask for, the law provides that a penalty may be charged. And we may have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on the tax return. This could make the tax higher or delay any refund. Interest may also be charged.

Please keep this notice with your records. It may help you if we ask you for other information.

If you have questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

This is the only notice we must give you to explain the Privacy Act. However, we may give you other notices if we have to examine your return or collect any tax, interest, or penalties.

F. Confidentiality of Tax Matters

You have the right to have your tax case kept confidential, The IRS has a duty under law to protect the confidentiality of your tax return information. However, if a levy is served or if a Notice of Lien or lawsuit is filed, certain aspects of your tax case, such as the amount of tax due and type of tax owed, may become a matter of public record.

G. Elimination of Penalty—Reasonable Cause

The Internal Revenue Code provides for elimination of penalties when you show reasonable cause rather than willful neglect for either late filing of a return or late payment of a tax.

Reasonable cause, broadly defined, is a cause which arises despite ordinary care and prudence exercised by you. If you believe you have reasonable cause for elimination of a penalty, discuss your reason with our representative. If he or she agrees, your penalty will be eliminated upon your supplying us a written statement setting forth the facts establishing reasonable cause. (Under the law, interest cannot be eliminated due to reasonable cause.) If our representative does not believe you have established reasonable cause, you may appeal this determination to the Regional Director of Appeals. You may make known your desire to appeal, either in writing or orally to our representative. You will then be contacted and a conference will be arranged at a time and place that is mutually convenient.

H. Offers In Compromise

By law you have the right to submit an offer in compromise on your tax bill. The Commissioner of the Internal Revenue Service has the authority to compromise all taxes (including any interest, penalty, additional amount or addition to tax) arising under the Internal Revenue laws, except those relating to alcohol, tobacco, and firearms.

A compromise may be made on one or both of two grounds—(1) doubt as to the validity of the amount owed or (2) doubt as to your ability to make full payment of the amount owed. The doubt as to the validity of the amount owed must be supported by evidence and the amount acceptable will depend upon the degree of doubt found in the particular case. In the case of inability to pay, the amount offered must exceed the total value of your equity in all your assets. The amount must also give sufficient consideration to your present and future earning capacity which may require a written agreement to pay a percentage of future earnings as part of the offer. A written agreement may also be required to relinquish certain present or potential tax benefits. (Individual hardship of a temporary nature alone is not a basis for our accepting an offer.)

Submission of an offer in compromise does not automatically suspend collection of an account. If there is any indication that the filing of the offer is solely for the purpose of delaying collection of the tax or that delay would negatively affect collection of the tax, collection efforts will be continued.

All forms necessary for filing an offer in compromise plus additional information regarding the procedure, can be obtained at many local Internal Revenue Service offices.

I. Supervisory Review of Employee Decisions

If at any step in the Collection process you do not agree with the recommendations of our employee, you have the right to discuss the matter with his/her supervisor. Our employees will tell you the name and location of the immediate supervisor.

J. Entry upon Private Property

You have the right to refuse to permit Collection personnel to enter upon your private property when the purpose of the visit is to conduct a seizure of your assets. If you decide to avail yourself of this right, the IRS may then decide to seek court authorization to enter upon the property to carry out the seizure action.

K. Problem Resolution Program (PRP)

The PRP is designed for taxpayers who have been unable to achieve a resolution to their tax problems through the other avenues of review explained in this booklet. To use the service you should contact the Problem Resolution Officer, who is available in each of our District offices. You may contact the Problem Resolution Officer on our toll free telephone system or visit him/her in the District office.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1980-311-369/1086

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

1086